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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 131

J. W. WHITEHOUSE, G. ORNDORFF, J. H. SYLVESTER, CLAUDE R. BARNES, R. SARCHET AND THE ORDER OF RAILROAD TELEGRAPHERS,

Petitioners,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY, WILLIAM H. CASTLE, R. M. BUTLER, C. P. DUGAN, E. T. HORSLEY AND J. E. KEMP,

Respondents.

BRIEF FOR RESPONDENT ILLINOIS CENTRAL RAILROAD COMPANY IN ANSWER TO THE BRIEF FOR AMICI CURIAE.

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QUESTIONS PRESENTED.

1. Whether Section 3 First (j) of the Railway Labor Act requires the National Railroad Adjustment Board to give notice of hearings and an opportunity to be heard, to all "involved" employees and their unions.

2. Whether an employee performing certain work and his union are "involved" in a dispute before the Board between a railroad and another union claiming the same work.

3. Whether the courts may require the Board to discharge its statutory duty.

PRELIMINARY STATEMENT.

The statement of the case, containing facts material to the questions presented, is fully set forth in the brief of respondent, Illinois Central Railroad Company, which was filed in answer to the brief for Petitioners (Ill. Cen. br. 2-6).

ARGUMENT.

I.

THE RAILWAY LABOR ACT REQUIRES THAT NOTICE SHALL BE GIVEN TO ALL EMPLOYEES AND UNIONS INVOLVED IN DISPUTES BEFORE THE BOARD.

Throughout their brief *Amici Curiae* seek to convey the erroneous impression that this case involves "overlapping contracts". Such is not the fact. The sole purpose of this litigation is to require the Board to perform its statutory duty by giving due notice and opportunity to be heard to an individual and his union who are "involved" in a dispute pending before the Board. It is not the position of Illinois Central, and the court below did not hold (as contended by *Amici Curiae*, br. 1-3) that the Board may rewrite agreements, pass upon their validity, or determine the rights of the parties to contract with respect to a particular subject matter. It is the position of Illinois Central and the court below did hold (R. 40-41, 56) that the Board must comply with the mandate of Congress as expressed in Section 3 First (j) of the Railway Labor Act [45 U.S.C. 153 First (j)].

Illinois Central expressly denies there is any "overlapping" of contracts or "dual" liability. This is something, however, the Board must decide when it considers the case on the merits, after all involved employees and their unions have been given notice and an opportunity to be heard. At that time the Board may resolve such dispute, if there be one, by considering the agreements of each union in the light of the other, giving due regard to usage, practice and custom, as this Court has said it should do.

Order of Conductors v. *Pitney*, 326 U. S. 561; *Slocum* v. *Delaware L. & W. R. Co.*, 339 U. S. 239.

The merits of the case before the Board are not, however, before this Court for review. Before the Board is entitled to consider the merits, it must comply with the jurisdictional requirements imposed by Congress. That is what the Board has refused to do; it is what Illinois Central contends the Board must do; it is all that the court below has required the Board to do; and it is the only question before this Court for decision.

At this stage of the proceedings before the Board, there is no question involved as to the *right* of crafts to contract for the work in question, or of the *validity* of any agreement, as *Amici Curiae* infer (*Am. Cur.* br. 5).

II.

THE EMPLOYEE, DOING THE WORK CLAIMED IN THE PROCEEDING BEFORE THE BOARD AND HIS UNION ARE "INVOLVED".

Amici Curiae contend that the only parties "involved" in disputes before the Board are the claimant union and the Carrier (*Am. Cur.* br. 7-15). That such a construction of the wording of Section 3 First (j) is not a proper one, is clearly shown by the language of this Court in *Elgin, J. & E. R. Co.* v. *Burley*, 325 U. S. 711. In that case the Court, in construing said section, said (pp. 734-735):

> "* * * § 3 First (j) not only requires the Board to give 'due notice of all hearings *to the employee* . . . involved in any dispute *submitted* . . .,' but provides for 'parties' to be heard 'either *in person*, by counsel, or by other representatives, as they may respectively elect.'
>
> "These provisions would be inapposite if the collective agent, normally a labor union and an unincorporated association, exclusively were contemplated.

> Such organizations do not and cannot appear and be heard 'in person.' Nor would the provision for notice '*to the employee* . . . involved in any dispute' be either appropriate or necessary. If only the collective representative were given rights of submission, notice, appearance and representation, language more aptly designed so to limit those rights was readily available and was essential for the purpose." (Court's italics.)

If Congress had intended that notice and an opportunity to be heard should be limited to parties, the statute would have said so. Instead, it provides that notice of hearings should be given to "employees * * * involved in any dispute submitted" to the Board by the parties. Congress made no attempt to restrict the hearings to the claimant and carrier but realized that others might be interested persons with a right to notice and hearing.

It is impossible to conceive of anyone more entitled to notice and hearing than one whose job or work is sought in a claim, and the union holding the contract to which he is subject. In its claim filed with the Board, Telegraphers seek to transfer to a telegrapher the work being done by a clerk (*Am. Cur.* br. 2). Under these circumstances there can be no doubt that Shears (the one doing the work) and the Clerks (his union) are "involved", for, if the Telegraphers are successful, Shears and the Clerks will be displaced. *Amici Curiae* state (*Am. Cur.* br. 12) that " * * * few courts have as yet been called upon to decide the question here involved." On the contrary, 26 federal judges have passed upon the question and held that Section 3 First (j) requires the Board to give due notice of its proceedings to the one doing the work claimed and to his union. The first such case was *Nord* v. *Griffin*, C. A. 7 (1936), 86 F. (2d) 481, cer. den., 300 U. S. 673. Since that decision, the courts have, in an unbroken line, adhered to and reaffirmed

that interpretation.* *Estes* v. *Union Terminal Co.*, C. A. 5 (1937), 89 F. (2d) 768; *Hunter* v. *Atchison, Topeka & Santa Fe R. Co.*, C. A. 7 (1948), 171 F. (2d) 594; *Brotherhood of Railroad Trainmen* v. *Templeton*, C. A. 8 (1950), 181 F. (2d) 527; *Hunter* v. *Atchison, Topeka & Santa Fe R. Co.*, C. A., 7 (1951), 188 F. (2d) 294; *Missouri-Kansas-Texas R. Co.* v. *Brotherhood of Railway & S. S. C.*, C. A. 7 (1951), 188 F. (2d) 302; *Brotherhood* v. *Pennsylvania R. Co.*; D. C. W. D. Penn. (1952), 107 F. Supp. 924; *Allain* v. *Tummon*, C. A. 7 (1954), 212 F. (2d) 32; *Order of Railroad Telegraphers* v. *N. O. T. & M. Ry. Co.*, D. C. E. D. Mo. (1954), 26 Labor Cases ¶ 68,622; *Missouri-Kansas-Texas R. Co.* v. *N. R. A. B.*, D. C. E. D. Ill. (1954), 26 Labor Cases ¶ 68,671.

That such a construction is proper, is made clear by a reading of the plain, unambiguous language of the statute itself as well as by the history of the Act. After setting forth the composition of the various Divisions of the Board, Congress concisely and unequivocally prescribed the duties of the Board [45 U. S. C. 153 First (j)]. These duties are to be fulfilled prior to making an award under sub-sections (m) and (n). The very first duty or obligation imposed upon the Board [under sub-section (j)] after a claim has been filed, is the command that the Board "shall give due notice of all hearings." The

* Although *amici curiae* allege that the case of *Order of Railroad Telegraphers* v. *N. O. T. & M. R. Co.*, C. A. 8 (1946), 156 F. 2d 1, is in conflict with the decisions cited above, a careful reading of that case will disclose that the court did not pass upon the notice question. In any event the Eighth Circuit has more recently held that notice and an opportunity to be heard must be given to all employees and unions involved in disputes before the Board in accordance with the requirements of Section 3 First (j) of the Act. *Brotherhood of Railroad Trainmen* v. *Templeton*, C. A. 8 (1950), 181 F. 2d 527, certiorari denied 340 U. S. 823, rehearing denied 340 U. S. 885. To the same effect is *Order of Railroad Telegraphers* v. *N. O. T. & M. Ry. Co.*, D. C. E. D. Mo. (1954), 26 Labor Cases ¶ 68,622.

Board's refusal to obey that command is the subject of this litigation.

It is significant that *amici curiae* in quoting from the hearings before the Congressional committees considering the 1934 Railway Labor Act, failed to include that portion of the testimony relating to the appearance and right to be heard of others than the claimant union and the carrier involved. We have no quarrel with the statement by Mr. Eastman (*Am. Cur.* br. 6) as to the Board's function *after* it obtains jurisdiction. However, to effect a proper interpretation of the rules or agreements it was recognized that individuals doing work claimed, and their unions, were entitled to notice and an opportunity to be heard. See Hearings on H. R. 7650 before the House Committee on Interstate and Foreign Commerce, 73rd Cong., 2nd Sess., p. 51 (Ill. Cen. br. 26-27). The same principle was reflected by this Court in the *Pitney* (326 U. S. 561) and *Slocum* (339 U. S. 239) cases.

The cases of *Washington Terminal Co.* v. *Boswell*, 124 F. (2d) 235, and *Order of R. R. Tel.* v. *New Orleans, Texas & Mex. Ry. Co.*, 156 F. (2d) 1, cited by *amici curiae* (*Am. Cur.* br. 12-14) are not in point. In those cases the courts held they were without jurisdiction to decide the controversies because jurisdictional dispute questions were presented for decision by the courts. There is no such issue here. Illinois Central is not here asking the courts to interpret either the Telegraphers' or the Clerks' contract, or to declare the rights of the parties under those agreements, or to decide who is entitled to the work in question. Illinois Central merely asks that the Court compel the Board to comply with the command of the Railway Labor Act.

This is not a case of deciding which union has the right to contract, as the *amici curiae* imply (*Am. Cur.* br. 15). It is a case of applying existing contracts to specific work to determine the coverage of the work.

III.

NOTICE AND OPPORTUNITY TO BE HEARD ARE ESSENTIAL TO THE PROPER FUNCTION OF THE BOARD.

There is no merit to the continued and repetitious argument of *amici curiae* that the decision of the court below requires the Board to resolve conflicting areas of contracts dealing with work jurisdiction. *Amici curiae's* illogical approach is, perhaps, most clearly shown by the fact that they proceed upon an assumption based upon an assumption. They first assume the Telegraphers' and Clerks' contracts overlap. This, however, is not true; and when, and if, the Board obtains jurisdiction Illinois Central will show the Board it is not true. *Amici curiae* next assume that if the contracts overlap, the Board must rewrite the agreements. This is not true. The Board need only interpret each agreement in the light of the other, taking into consideration usage, custom and practice.

Surely the Railway Labor Act was intended to provide protection to the carriers as well as to employees and unions. Accordingly, it is apparent that Illinois Central is entitled to have the Board give notice and an opportunity to be heard to Shears and the Clerks, for only in this way can there be a full, complete and valid determination of the Telegraphers' claim. It is common knowledge that the labor agreements between carriers and unions do not define with certainty the individual positions covered. It was for that reason that this Court in *Order of Conductors* v. *Pitney*, 326 U. S. 561, wisely concluded:

> "* * * interpretation of these contracts involves more than the mere construction of a 'document' in terms of the ordinary meaning of words and their position. (Citing cases.) For O. R. C.'s agreements

with the railroad must be read in the light of others between the railroad and B. R. T. And since all parties seek to support their particular interpretation of these agreements by evidence as to usage, practice and custom, that too must be taken into account and properly understood" (pp. 566-567).

CONCLUSION.

For the foregoing reasons, and for the reasons heretofore given in its brief in answer to the Petitioners, Illinois Central respectfully submits that this case should be dismissed, or in the alternative, that the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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